

MONTANA PUBLIC DEFENDER COMMISSION
CONTRACT STEERING COMMITTEE MEETING
CONFERENCE CALL

Public Location: Helena Regional Office
139 North Last Chance Gulch, Helena, MT 59601

September 19, 2016

DRAFT MINUTES

Committee Members Present

Bonnie Olson, Marion; Brian Gallik, Bozeman

Other Commissioners Present

Fritz Gillespie (Commission Chair), Helena

Agency Team Members Present

Bill Hooks, Chief Public Defender; Kristina Neal, Conflict Coordinator; Scott Cruse, Chief Administrator; Wendy Johnson, Contract Manager; Carleen Green, Accounting Supervisor; Cathy Doyle, Administrative Assistant

Interested Persons

Dr. Michael Scolatti, Contract Mental Health Consultant

1. Call to Order

The meeting was called to order at 10:10 a.m.

2. Approve Minutes of July 18, 2014 meeting (*Action Item)

Commissioner Olson moved to adopt the minutes as drafted. Commissioner Gallik seconded and the motion carried.

3. Appoint Committee Chair

Commissioner Gallik volunteered to chair the committee.

4. MOUs

a) Potential Changes to Provisions in Current MOUs

Contract Manager Wendy Johnson reviewed the new provisions for the attorney MOU. The investigator and mental health provider MOUs will have similar requirements.

1. A provision that explicitly states that work must be done by the attorney signing the MOU, not a support staff person doing administrative tasks or another attorney providing coverage, including associates in their law firms. A remedy for violating this provision will also be incorporated, which may include suspension or termination of the MOU.

2. Provisions relating to the conversion to the online billing system for pre-approval and billing processes, to reflect current procedure.
3. Language from the Department of Administration relating to the Affordable Care Act that applies to all vendors. Agencies will be penalized if they don't comply with this requirement.
4. A provision that will no longer allow billing on closed cases, with very few exceptions.
5. A provision regarding consequences of failing to comply with OPD policies, such as the case closing policy.
6. A provision relating to case compensation limits.
7. Explicit language stating that revocations require a new appointment; some attorneys incorrectly assume they are automatically appointed in a revocation if they handled the underlying case.
8. Changing the current requirement that claims are to be submitted no more than 45 days from the last day of the month of service to say the 15th of the appropriate month.
9. A provision requiring mental health providers to submit claims on the same schedule as attorneys (i.e., complying with the 45-day rule).

Ms. Johnson asked for suggestions or comments on the new provisions.

Commissioner Olson asked, regarding revocations, if OPD requires the attorney to file notice that they are no longer the attorney of record. The court would still consider the original attorney to be on the case if they haven't filed notice of termination. Ms. Johnson replied that it varies by attorney, so a provision requiring that they file notice should be included in the MOU. Commissioner Gallik agreed that this is good practice for administrative purposes; it will make appointment of a new attorney easier and will avoid breakdowns in communications.

Commissioner Gallik requested more detail regarding the need for the first provision; is the practice of using associates without MOUs the result of schedule conflicts? Ms. Johnson said that is the case in some firms, and they keep her informed of who is doing the work, and then that attorney bills for it. However, all associates must have an MOU to submit a claim. If they don't, we refuse to pay that portion of the bill.

- b) New MOUs for Transcriptionists, Administrative Support, and Expert Witnesses
Ms. Johnson proposes setting a rate and requiring MOUs for these vendor categories. Current practice is to pay whatever hourly rate they bill, which varies widely between vendors in the same category.

The transcriptionist category includes vendors transcribing witness or police interviews, but not court transcription, which is covered by statute. Contract administrative support is being used more frequently because the FTE conflict

attorneys don't have support staff. It is time to require these providers to sign an MOU establishing them as independent contractors and agreeing to an hourly rate approved by the Commission.

Ms. Johnson said that it would be difficult to establish a fee schedule for expert witnesses because the types of services and fees run the gamut. However, she suggests a one page contract that includes the scope of the service, the hourly rate, and the maximum to be paid. This would augment the pre-approval process and reduce the number of supplemental requests.

Commissioner Gallik said this is just good practice, especially regarding the expert witnesses. Commissioner Olson agreed.

5. Fee Schedules

The Commission's biennial review of compensation rates is due and will be on the agenda for the October 3 meeting. Ms. Johnson provided a draft revision to the mental health fee schedule that doesn't include any changes to the hourly rates, but makes the fee structure easier to understand. The draft also includes information regarding the pre-approval process that may be incorporated into the MOU. Chairman Gillespie suggested including the language in both the fee schedule and the MOU, stating that it has been approved by the Commission.

Commissioner Gallik asked if a detailed billing statement by a mental health provider could create confidentiality problems related to discovery. Ms. Johnson will work with Dr. Scolatti to develop language showing the level of detail required on the invoice that would be generic enough to protect confidential information while allowing OPD to determine if the billing is appropriate.

a) Contract Attorney, Mental Health Provider and Investigator Rates

Ms. Johnson reviewed the current fee schedule, and said that there is currently no way to fund a rate increase for contract attorneys or investigators.

The capital defense rate is \$120 per hour, but it doesn't take into consideration a change in rate if the notice to file the death penalty comes off the table. If the rate then goes back to \$62 per hour, it should be explicitly stated. She suggested that an additional MOU might be necessary for contractors providing representation in capital cases that identifies who approves claims and experts, and under what circumstances the rate would change.

The reformatted mental health fee schedule doesn't change the rates, but make them easier to understand. It also shows explicitly that there are two flat fee services, and is the only fee schedule that has variable rates for travel and testimony. Dr. Scolatti and the committee agreed that the new format is much better.

Chairman Gillespie said that the Task Force on Public Defender Operations discussed adopting differential rates for contract attorneys based on location as a tool for recruiting in difficult areas, but didn't advance legislation since it is already within the Commission's authority to set rates. He asked if this should be a topic for discussion for the full Commission. Commissioner Gallik said that from a supply and demand standpoint, discussion of a higher rate might be in order. Ms. Johnson said that Regions 10 and 11 (Glendive and Miles City) pull primarily from the Billings contract pool; instead of recruiting new attorneys, we would just end up paying attorneys who are willing to travel more. Conflict Coordinator Kristina Neal added that the rate we would have to offer would be substantially more because there are so few attorneys in that part of the state. Chairman Gillespie thinks it is generally a bad idea.

b) Fee Schedule for Transcriptionists and Administrative Support Staff

The state procurement division is working on a contract for transcription services, which may or may not benefit OPD. Otherwise an appropriate rate, either by page or by hour, needs to be established by the Commission. An hourly rate also needs to be set for support staff services, including paralegal services. The agency is currently being billed for services at whatever rate the providers choose.

Ms. Johnson suggests a rate of \$20 per hour, regardless of service type, with pre-approval required for an entire month of service, rather than per client. Billing would still be by client to track individual case costs.

Commissioner Olson asked if OPD's transcription rate should be consistent with the court reporter per page rate set by statute. Ms. Johnson responded that non-court reporter transcription has strict deadlines, and generally costs more. She and Ms. Neal will look at those bills and talk to state procurement to develop a rate for the Commission to consider at the October 3 meeting.

Commissioner Olson pointed out the discrepancy between the proposed \$20 per hour rate for administrative support compared to OPD staff salaries. Ms. Johnson acknowledged the difference, but the Program 3 attorneys are forced to contract for this service because there are no FTE available. Accounting Supervisor Carleen Green said that OPD legal secretaries make \$23-26 per hour including benefits.

6. CRM Update

a) Online Billing

All contract attorneys are submitting claims through the online system and it is going well. It was very helpful at the end of the fiscal year, and has provided good data.

b) Pre-approvals

Software development is currently underway; it will apply to both contract and

FTE attorney pre-approval requests. The pre-approval policy will be updated when the new procedure is ready to implement. The process will include automatic routing for the necessary approvals depending on the type of request, e.g. mental health requests will start with Dr. Scolatti. The request will then go to the appropriate regional deputy and/or program manager for approval. Automating the process will create efficiencies, and the pre-approved amount will act as a hard cap when the mental providers and investigators are integrated into the billing system.

c) **Case Compensation Limits**

The software is ready to roll out internally following analysis of CRM data and time tracking data from both FTE and contractors. Caps based on case type have been developed, and the internal rollout will allow Ms. Johnson to test those initial values. She expects to release it to the contractors in December. In the future, the goal is to set caps on specific charges rather than just by case type.

7. Policy Revisions

a) **Billing Policy**

b) **Pre-approvals**

These policies will be updated to reflect the new processes related to the online system once the software development is complete, probably in the next month or so.

8. Contracts for Renewal

a) **Mental Health Coordinator**

Dr. Scolatti's contract is up for renewal. The contract will be modified so that Dr. Scolatti will no longer be required to conduct fitness to proceed evaluations in Helena, but he will become the first level reviewer of claims from mental health providers. This is not a material change to the contract, so it will not need to go through the RFP process.

b) **Case Management Software**

The contract for the case management system is expiring, and there are no renewals available. There is no reason to go through an RFP process due to budget constraints. Instead, Ms. Johnson plans to do a sole source contract that will continue with the current system and pay for maintenance only. This system is going to a new platform and a new provider, so she hopes to put it out for bid in the future.

9. Contractor Issues Update

Ms. Johnson has been dealing with multiple problems, including attorneys billing for support staff and associate time, fraudulent billing by a contract investigator, suspensions due to performance issues, and a referral to the Office of Disciplinary Counsel.

Ms. Johnson is developing a training manual and video tutorials for the new online billing system. In general, the system is pretty user friendly, but there will be a handful of people who will struggle and she is trying to address that challenge.

Billing approval for non-conflict cases has been changed so that the Contract Manager is no longer doing the final approval, but assumes an audit function. The regional deputies will have final approval of those claims following the accounting review. Ms. Johnson will audit claims during the proficiency determination process. The new workflow will give her more time to do the proficiency determinations, address performance problems, and handle training issues.

10. Public Comment

No public comment was offered.

11. Adjourn

Commissioner Olson thanked Ms. Johnson for her hard work and moved to adjourn. Commissioner Gallik seconded and the motion carried. The meeting adjourned at 11:35 a.m.